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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,161	03/29/2007	Juergen Eberle	2003P01969WOUS	5081

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER	
KOAGEL, JONATHAN BRYAN	
ART UNIT	PAPER NUMBER
3744	

NOTIFICATION DATE	DELIVERY MODE
08/09/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/584,161	**Applicant(s)** EBERLE ET AL.	
	Examiner JONATHAN KOAGEL	**Art Unit** 3744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *7-10 and 12-28*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/JK/

/WILLIAM E. TAPOLCAI/
Primary Examiner, Art Unit 3744

In response to the applicant's argument regarding there being no motivation to combine the teachings of Electrogerate and Dobson, the examiner disagrees. The examiner stated that it would have been obvious to a person of ordinary skill in the art to use ultrasound welding in order to provide an adhering method that is much faster than conventional adhesives. Furthermore, a person of ordinary skill in the art would have known that ultrasound welding requires no connective bolts, nails, soldering material or adhesives, thereby reducing manufacturing costs. The applicant further states that Dobson is directed toward an integrated U-tube and absorbent unit and therefore there would be no reason to adopt the teachings of Dobson. Once again, ultrasound welding is known in the art and a person of ordinary skill in the art would have known to use the technique of ultrasound welding.

In response to the applicants argument regarding Dobson includes no suggestion to use untrasonic welding to join outer surfaces of the throttling tube and the suction tube, Dobson was not used to explicitly teach joining outer surfaces of a throttling tube and suction tube, rather, the technique of using ultrasound welding to bind a U-tube. Dobson was used in the rejection to show why a person of ordinary skill in the art would want to utilize the technique of ultrasound welding on the second location of Electrogerate. The applicant further argues that Dobson's U-tube is injection molded and therefore have no application to the pipes or tubes which are involved in Electrogerate. However, as stated in the last office action, Dobson teaches in paragraph 52, that the u-tube can also be a metal u-tube.

In response to the applicant's argument regarding Dobson not teaching the technique of using ultrasonic welding of metal, the examiner disagrees. Dobson teaches that the u-tube is fabricated in two halves which are bonded to each other by ultrasonic welding. It is then interpreted that when Dobson teaches that the U-tube can also be a metal u-tube, the metal u-tube would also be fabricated from two halves and the same ultrasonic welding technique would also apply to the bonding of the two halves. Additionally, as stated above, the technique of ultrasonic welding is known in the art and a person of ordinary skill in the art would have known to use an ultrasonic weld at the second location, due to the advantages of ultrasonic welding such as a faster adhering method over using conventional adhesives as well as reduced manufacturing costs, due to the lack of connective bolts, nails, etc.

In response to the applicant's argument regarding Electrogerate and Dobson not teaching the use of both a solder joint and an ultrasonic joint, the last office action stated that Electrogerate teaches an equivalent technique of soldering at the outlet location, by using the technique of brazing. A person of ordinary skill in the art at the time of invention would have known that the technique of brazing is a functional equivalent of soldering. As stated above, Electrogerate fails to explicitly teach the joining of the outer surfaces of the suction tube and the throttling tube at the second location by ultrasound welding. As noted above, Dobson was used to show why a person of ordinary skill in the art would want to use an ultrasonic weld at the second location of Electrogerate. Furthermore, in regards to claim 16, Bitter was used to show the technique of soldering on a refrigerant tube to an evaporator, and why it would have been obvious to a person of ordinary skill in the art at the time of invention to use soldering to fix the suction tube and throttling tube and the first outlet location. The applicant further argues that if Dobson were adopted into Electrogerate, ultrasonic welding would be used at both locations, not just one location, however the examiner disagrees. The Dobson reference was intended to be used to create an ultrasonic weld at the second location in order to provide an adhering method that is much faster than conventional adhesives or solvents. in response to the applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

In response to the applicant's argument regarding claims 8, 13, 19 and 26 and the examiner not established the parameters of these claims are a result of effective variables, the examiner disagrees. As can been seen in the last office action, each parameter has been determined as a result effective variable, since Electrogerate disclosed that a distance exists between the first and second locations and that the suction tube and the throttling tube has a defined diameter. Furthermore, the examiner stated it is not inventive to discover the optimum workable range by routine experimentation and it would have been obvious to one of ordinary skill in the art at the time of invention to provide the specific distance of the first and second location as well as the diameters of the suction and throttling tube.